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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/673,005 | 09/26/2003 | Han-Pin Lee | JCLA7896-D | 9517 |

23900 7590 01/26/2005

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| EXAMINER |
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MEREK, JOSEPH C

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| ART UNIT | PAPER NUMBER |
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3727

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|------------------------------|--|
| Office Action Summary | Application No. 10/673,005 | Applicant(s) LEE, HAN-PIN | |
| | Examiner Jos ph C. Merek | Art Unit 3727 | |

-- Th **MAILING DATE** of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6,7,20 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,7,20 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Applicant's election without traverse of Group III (Fig. 5) in the reply filed on 10/4/04 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 6, there is no antecedent basis for the limitation "the second external opening".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 7, 20, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US 5,597,089). Regarding claim 1, as seen in Figs. 1-4, the straw is 14 and the first external opening is 36 and the interior volume is substantially separated from an interior volume of the container body 22 as the communication between the straw and the body is at the lower end of the straw proximate the bottom of the container body 12. See Col. 2, lines 15-20, where it is stated that the straw and the

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vessel are integrally formed as a one-piece element. The communication opening is at 30. Regarding claim 3, 70 is the straw head. The limitation straw head does not require any structure that is not in the reference. Regarding claim 6, see Fig. 3 where the second external opening is at 46. This opening is capable of allowing exterior air into the container. Regarding claim 7, the cap 42 is capable of being opened by punching with a straw head. This limitation does not require any structure that is not in the reference. Regarding claim 20, the second external opening is sealed by the cap 42. The second opening is integrally formed with the container. Moreover, the cap 42 is integral with the container body when it is attached to the container body. The limitation integral does not require one-piece construction. Regarding claim 23, the first external opening is sealed and the seal is integrally formed with the straw.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5,597,089) in view of Walker (US 5,782,358). Regarding claim 7, to the degree that claim 7 requires a thin member sealing the second opening, then the container of Smith does not teach this limitation. Walker as seen in Fig. 1 and Col. 2, lines 5-10, teaches a thin member sealing the neck, which is pierceable by a straw head. It would have been

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obvious to employ the inner seal of Walker in the container of Smith to better seal the neck opening in order to increase the shelf life of the product.

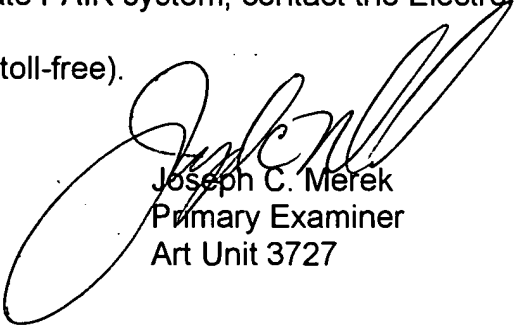
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brunton et al (US 3,092,275), Weitzner (US 3,349,987), Robbins, III (US 5,295,609), and Thompson (US 6,499,614) are all cited for teaching containers with straws. Nataf (US 3,347,401) is cited for teaching a container with multiple straws. Farber et al (US 5,054,684) and Bettel, Jr. et al (US 5,348,217) are both cited for teaching pierceable openings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merék
Primary Examiner
Art Unit 3727